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159 F.R.D. 649

Federal Rules Decisions

1995

THE JUDICIAL AMENDMENTS ACT OF 1994^{a1}

Margaret L. Sanner^{aa1} and Carl Tobias^{aaa1}

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WESTLAW LAWPRAC INDEX

JUD--Judicial Management, Process and Selection

Five members of the Senate Judiciary Committee introduced the Judicial Amendments Act of 1994 on August 18, as Congress was fighting over the crime bill, health care reform, and many additional pressing issues as well as rushing toward its Labor Day recess.¹ Senator Joseph Biden (D-Del.), Chair of the Senate Judiciary Committee, Senator Howell Heflin (D-Ala.), Chair of the Subcommittee on Courts and Administrative Practice, and Senator Charles Grassley (R-Iowa), Senator Orrin Hatch (R-Utah) and Senator Arlen Specter (R-Pa.), ranking minority members of the Senate Judiciary Committee, sponsored the legislation, which the Senate enacted that day and sent to the House of Representatives.²

On October 7, the House of Representatives passed the measure as received, following considerable political wrangling in which certain members of the House Judiciary Committee attempted to insert provisions governing subjects, such as authorization to build more federal courthouses, that they favored.³ At the eleventh hour, pragmatism seemingly prevailed, and Congress enacted this legislation, which extends three programs that are important to the functioning of the federal courts.⁴ This essay briefly examines the new statute in an attempt to familiarize federal court judges, lawyers and parties, as well as other individuals and entities that may be interested in the operations of the courts, with the enactment.

The 1994 Judicial Amendments Act reauthorizes several initiatives that have become significant to the ongoing work of the federal judiciary. Section two of the measure extends for three years the authorization of the Judiciary Automation Fund, section three extends until the end of 1997 the *650 authorization for court-annexed arbitration in twenty federal district courts, and section four extends for one year the RAND Corporation's study of experimentation in ten pilot district courts under the Civil Justice Reform Act (CJRA) of 1990.

Congress created the Judiciary Automation Fund in 1989 to provide a multi-year source of funding for the judiciary's development and implementation of a long range plan to automate the courts, in hopes of improving their efficiency.⁵ The 1994 legislation requires modifications in the Fund which respond to a recent General Accounting Office study that criticized some features of the Fund's functioning.⁶ For instance, the legislation conditions reauthorization on the courts' development of a strategic business plan identifying the purposes of judicial automation.⁷ The Fund has been a worthwhile endeavor and, as improved by the new changes, it should be even more valuable. Moreover, the federal bench strongly supported the Fund's continuation. Congress, therefore, appropriately decided to reauthorize the Fund.

Section three extends for three years pilot programs involving mandatory court-annexed arbitration which are presently operating in ten selected federal districts⁸ and involving voluntary court-annexed arbitration that are currently functioning

in ten additional districts.⁹ The statute also authorizes the remaining seventy-four districts to adopt voluntary court-annexed arbitration.¹⁰ This type of alternative dispute resolution (ADR) apparently works well, especially in relatively simple, routine cases that have small monetary amounts at stake, although this and other forms of ADR can be expensive. The three-year extension implements the suggestions of the Judicial Conference of the United States, the federal courts' policymaking arm, and is apparently a balanced approach.

The fourth section extends for one year the RAND Corporation's study of *651 experimentation with procedures for reducing expense and delay.¹¹ Completion of that study has been delayed primarily because unanticipated difficulties slowed implementation of the procedures being assessed in numerous pilot and comparison districts.¹² RAND believed that one-fifth of the cases which it is evaluating would not have been completed by the statutory deadline and that these are the very type of complex lawsuits that are most difficult to resolve and at which the CJRA is aimed.¹³ RAND estimates that less than eight percent of the cases would remain unresolved at the conclusion of an additional year.¹⁴ Congress properly decided to extend this deadline. Having expended substantial resources on this nationwide experiment with cost and delay reduction procedures, Congress sensibly provided for capturing that cohort of cases which is most likely to inform future reform efforts.

Senators Grassley and Heflin, when introducing the bill in the Senate, observed that additional legislation governing ADR and civil justice reform may be warranted in the future and that the Clinton Administration would issue reform recommendations next year.¹⁵ Representative William J. Hughes (D-NJ), Chair of the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, during discussion on the floor expressed disappointment that more comprehensive court improvements legislation, particularly governing court-annexed arbitration, was not passed in 1994, and expressed the sincere hope that Congress would revisit the issue in 1995 when the Justice Department would present a civil justice reform package.¹⁶ The Congress wisely deferred consideration of a thoroughgoing court improvements measure until the convening of the 104th Congress, because inadequate time remained in the second session of the 103d Congress to consider carefully comprehensive legislation.¹⁷

Relatively few suggestions for implementing the 1994 Judicial Amendments Act are warranted, because the legislation continues programs that have already been functioning rather effectively and the statute is comparatively straightforward. As to the Judiciary Automation Fund, the courts *652 should be attentive to the General Accounting Office criticisms and to the statutory strictures governing long range management and business plans.¹⁸ As to ADR, the twenty courts with reauthorized programs should insure that ADR is rigorously evaluated, so that informed decisions can be made regarding the future use of ADR.¹⁹ As to the RAND study, the pilot and comparison districts should do everything possible to facilitate RAND's collection, analysis and synthesis of the maximum accurate data.²⁰

Both the Senate and the House acted properly in adopting the Judicial Amendments Act of 1994. That measure will guarantee the uninterrupted continuation of three programs which have proved to be very beneficial to the federal courts. If the federal judiciary implements the statute in accord with the modest suggestions above, the courts should be able to improve the operation of these programs.

The views expressed are those of the authors and do not necessarily reflect the views of the publisher.

Footnotes

a1 Copyright 1995 Margaret L. Sanner and Carl Tobias.

- aa1 Principal, Milodragovich, Dale, Steinbrenner & Binney, P.C., Missoula, Montana.
- aaal Professor of Law, University of Montana. I wish to thank Cecelia Palmer and Charlotte Wilmerton for processing this piece, and the Harris Trust for generous, continuing support.
- 1 See Pub.L. No. 103-420, 108 Stat. 4343 (1994); *see also* 140 CONG.REC. S12,104 (daily ed. Aug. 18, 1994).
- 2 See 140 CONG.REC. S12,104, 12,107 (daily ed. Aug. 18, 1994).
- 3 See Judicial Amendments Act of 1994, Pub.L. No. 103-420, 108 Stat. 4343 (1994); *see also* 140 CONG.REC. H11,295, 11,302 (daily ed. Oct. 7, 1994). The information in the text is premised on conversations with individuals who are familiar with the developments that transpired.
- 4 See Judicial Amendments Act of 1994, Pub.L. No. 103-420 (1994); *see also* 140 CONG.REC. H11,295, 11,302 (Oct. 7, 1994).
- 5 See 28 U.S.C. § 612 (1988 & Supp. V 1993).
- 6 See Pub.L. No. 103-420, 108 Stat. 4343, 4344-45 § 2 (1994); *see also* 140 CONG.REC. S12,104, 12,105 (daily ed. Aug. 18, 1994).
- 7 See Pub.L. No. 103-420, 108 Stat. 4343, 4344-45 § 2 (1994); *see also* 140 CONG.REC. S12,104, 12,105 (daily ed. Aug. 18, 1994).
- 8 See Pub.L. No. 103-420, 108 Stat. 4343, 4345 § 3 (1994). These courts are the Northern District of California, the Middle District of Florida, the Western District of Michigan, the Western District of Missouri, the District of New Jersey, the Eastern District of New York, the Middle District of North Carolina, the Western District of Oklahoma, the Eastern District of Pennsylvania, and the Western District of Texas. *See* 28 U.S.C. § 658(1) (1988 & Supp. V 1993).
- 9 See Pub.L. No. 103-420, 108 Stat. 4343, 4345 § 3 (1994). These courts are the District of Arizona, the Middle District of Georgia, the Western District of Kentucky, the Northern District of New York, the Western District of New York, the Northern District of Ohio, the Western District of Pennsylvania, the District of Utah, the Western District of Virginia, and the Western District of Washington.
- 10 See Pub.L. No. 103-420, 108 Stat. 4343, 4345 § 3 (1994); *see also* 140 CONG.REC. S12,104, 12,105 (statement of Senator Heflin). Senator Heflin also introduced a bill that would authorize the district courts to adopt ADR programs in addition to court-annexed arbitration, although the legislation did not pass. *See* S.2524, 103d Cong., 2d Sess. (1994); *see also* 140 CONG.REC. S14, 479, S14,506 (daily ed. Oct. 6, 1994); S.513, 104th Cong., 1st Sess. (1995).
- 11 See Pub.L. No. 103-420, 108 Stat. 4343, 4345 § 4 (1994); *see also* Judicial Improvements Act of 1990, Pub.L. No. 101-650, § 105(c) 1990 (prescribing study).
- 12 See Terence Dunworth & James S. Kakalik, *Preliminary Observations on Implementation of the Pilot Program of the Civil Justice Reform Act of 1990*, 46 STAN.L.REV. 1303, 1322 (1994). The ten pilot courts experimenting with the procedures are the Southern District of California, the District of Delaware, the Northern District of Georgia, the Southern District of New York, the Western District of Oklahoma, the Eastern District of Pennsylvania, the Western District of Tennessee, the Southern District of Texas, the District of Utah, and the Eastern District of Wisconsin. The experience in these courts is being compared with that in ten comparison courts. Those courts are the District of Arizona, the Central District of California, the Northern District of Florida, the Northern District of Illinois, the Northern District of Indiana, the Eastern District of Kentucky, the Western District of Kentucky, the District of Maryland, the Eastern District of New York and the Middle District of Pennsylvania.
- 13 See 140 CONG.REC. S12,104, 12,105 (statement of Senator Heflin).
- 14 See *id.*
- 15 See *id.* at S12,105 (statement of Senator Heflin); *id.* at S12, 106 (statement of Senator Grassley).
- 16 See 140 CONG.REC. H11,295, 11,296.

- 17 H.R. 4357, 103d Cong., 2d Sess. (1994) is an example of more comprehensive legislation.
- 18 *See supra* notes 6-7 and accompanying text.
- 19 *See supra* notes 8-9 and accompanying text. The RAND study is the type of rigorous evaluation that we have in mind. *See supra* note 11 and accompanying text.
- 20 *See supra* note 12 and accompanying text.

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